



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 30, 2003

This letter is in response to your letter to Senator Richard Shelby regarding children's rights versus parents' rights in early childhood special education. Your letter was forwarded to the Office of Special Education Programs in the Office of Special Education and Rehabilitative Services.

In your letter, you state that you were informed that a child cannot be evaluated and receive early intervention services and later special education services if parents do not give written consent and that you were told that laws concerning this issue are presently being reviewed. You state that you are concerned that not all parents are "capable of making rational decisions for their children" and that many children "who have been identified by their pediatricians as children who have developmental delays do not receive the help that is available."

Parental Consent for Evaluation. The Individuals with Disabilities Education Act (IDEA) and the final regulations implemented pursuant to this Act specifically address parental consent for evaluations. The regulations implementing Part C of the IDEA (concerning early intervention services for infants and toddlers with disabilities birth through two years of age), at 34 CFR §303.404(a), require that written parental consent be obtained before conducting the initial evaluation and assessment of a child. The Part C regulations, at 34 CFR § 303.404(b), further require that the public agency make reasonable efforts to ensure that the parent is fully aware of the nature of the evaluation and assessment or the services that would be available and understands that the child will not be able to receive the evaluation and assessment or services unless consent is given. Similarly, the regulations implementing Part B of the IDEA (concerning special education and related services for children with disabilities), at 34 CFR § 300.505(a)(1), specifically require that informed parental consent be obtained before an initial evaluation or reevaluation.

If a parent refuses consent for an initial evaluation or reevaluation, the regulations implementing Parts C and B of the IDEA permit the agency to pursue those evaluations by using the mediation and due process procedures outlined in IDEA, except to the extent inconsistent with State law relating to parental consent. (See Note 2 following section 303.404 of the Part C regulations and section 300.505(b) of the Part B regulations.)

Parental Consent for the Initial Provision of Services. The Part C regulations require, at 34 CFR §303.404(a), that written parental consent also be obtained before initiating the provision of early intervention services. Similarly, the Part B regulations, at 34 CFR §300.505(a)(1), require that informed parental consent be obtained before the initial provision of special education and related services. There is no provision authorizing public agencies to use mediation or due process procedures to override a parent's refusal to consent to the initial provision of early intervention or special education and related services.

You stated in your letter that you were told that laws concerning this issue are presently being reviewed. The reauthorization of the IDEA is currently being considered in Congress.

A final question in your letter is "Why can't evaluations to detect learning disabilities (with the parent's knowledge, of course) be part of all the other tests given to children when they enter kindergarten?"

The IDEA requires States to have in place policies and procedures for ensuring that all children with disabilities are identified, located, and evaluated. This requirement is known as "child find" and is applicable to all infants, toddlers and children with disabilities. (See 34 CFR §§300.125 and 303.321.) Thus, each State decides the methods it will use to fulfill its child find responsibilities. In addition, the Part B regulations provide that parental consent is not required for administering a test or other evaluation that is administered to all children, unless, before administration of that test or evaluation, consent is required of parents of all children. (See 34 CFR §300.505(a)(3)(ii).) However, if a child is suspected of having a disability on the basis of a general screening or assessment administered to all children, parental consent must be obtained before a full and individual evaluation, consistent with the requirements of the IDEA, is conducted.

I hope you find this information helpful. If you would like further assistance, please contact Dr. Wendy Tada of my office at 202-205-9094.

Sincerely



Patricia J. Guard for

Stephanie S. Lee

Director

Office of Special Education Programs

cc: Mr. Mabrey Whetstone
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